

Item No.20
02.05.2023
Court. No. 19
GB

WPA 10444 of 2023

Samit Kumar Mondal
Vs
The State of West Bengal & Ors.

*Mr. Supriya Chattapadhyay,
Mr. Sudip Kumar Maiti*

...for the Petitioner.

*Mr. Jahar Lal De,
Mr. Rudranil De*

...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner complained before the authorities about the e-tender process and grant of work order in respect of a private enterprise, namely, T. Enterprise, who was allegedly the lowest bidder.

The ground for objection was that the technical evaluation was not done properly and fabricated documents were used by the successful tenderer in order to fulfil the eligibility criteria.

Another challenge was that between the technical evaluation and the financial evaluation a gap of 48 hours, as required by the notice inviting tender, was not maintained.

The petitioner further contended that the bidders did not get an opportunity to file their complaint within the short span of 18 minutes between the technical evaluation and financial evaluation. The documents uploaded by the bidders could not be perused in such a short span of time.

The authorities called for proof from the petitioner in support of the allegation of false and fabricated documents of T. Enterprise. Ultimately, the authorities decided to cancel the entire process and go for re-tender. The subsequent e-tender notice was published on April 20, 2023 and the last date for online submission of the bids is May 3, 2023, upto 18 hours.

The petitioner has challenged the notice of cancellation of the NIT No.54(01)22-23 dated March 2, 2023, issued by the Executive Officer, Bhagwanpur-I panchayat samiti, by a corrigendum notice dated April 20, 2023.

The petitioner claims that being the second lowest tenderer, he should be granted the work order which was initially granted to T. Enterprise and then not allowed to be finalized on the basis of the complaint of the petitioner.

The contentions of the petitioner cannot be accepted and the writ petition cannot be allowed, directing the authorities to issue the work order in favour of the petitioner, for the following reasons:-

- a) The petitioner cannot approbate and reprobate. On the one hand, the petitioner had challenged the entire tendering process starting from the technical evaluation round upto the financial evaluation round and grant of the contract and on the other hand now claims issuance of the work order in respect of such defective process.
- b) The petitioner himself contended that the time gap between the technical evaluation and the financial

evaluation were not in consonance with the terms and conditions of the notice inviting tender, which means that the process was flawed.

- c) On the basis of the petitioner's complaint all the documents were re-examined and the authorities had decided to go for fresh tender, upon cancellation of the earlier process.
- d) The terms and conditions of the tender notice do not provide that in the event of cancellation of the lowest bid, the second lowest bidder would be awarded the tender.
- e) Finally, when the authorities have found several irregularities in the process adopted and there were other participants as well, the petitioner as the second lowest bidder cannot be given the work order in the absence of others who may have also suffered for the alleged defects in the tender process. If such bidders are not allowed to participate, they would be victims of a mala fide and an irregular process. Thus, for the sake of transparency, fair and just competition and to avoid discrimination, the authorities rightly decided to cancel the tender and go for a re-tender.

Under such circumstances, the writ petition is disposed of without any orders. The order of cancellation of the NIT No.54(01)22-23 is upheld. The decision of re-tendering is also upheld. The money, if any, deposited earlier in respect of the

cancelled NIT, shall be refunded to the petitioner within 72 hours.

The petitioner is at liberty to apply within the course of tomorrow and participate in the process.

The petitioner is also at liberty to approach the authority by seeking further investigation with regard to the issue of submission of false and fabricated documents in the tender process. If such application is filed, the authority shall take appropriate measures in accordance with law, upon compliance of the principles of natural justice and upon giving every opportunity to T. Enterprise and/or his men and agents to counter such allegation of the petitioner.

Accordingly the writ petition is disposed of.

The report filed by the State respondents is taken on record.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)